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NO._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

STATE OF ALABAMA,

Petitioner

V.

CHRIS PRINCE,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT AND COURT OF CRIMINAL APPEALS OF ALABAMA

OF

CHARLES A. GRADDICK
ATTORNEY GENERAL OF ALABAMA

JOSEPH G. L. MARSTON, III
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ATTORNEYS FOR PETITIONER

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QUESTIONS PRESENTED

Under the doctrine of Collateral Estoppel, where a single perpetrator rapes and robs a woman and a certain defendant is charged separately with both crimes and is acquitted of rape:

1. In determining if the issue of identity was resolved in the defendant's favor so as to bar the robbery prosecution, should a court look only to the defense evidence in the rape trial or should the court also consider the State's evidence, the matters brought out on cross examination of the State's witnesses, the charge to the jury, etc.?

2. Is the robbery prosecution barred by the acquittal of rape, where the state's evidence in the rape trial (1) that a violent attack on the victim occurred was undisputed and (2) that the defendant was the perpetrator was strong but (3) the State's evidence as to the

corpus delecti of rape was probably insufficient to prove rape, (4) defense raised questions relating the corpus delecti on cross examination and (5) the trial court's charge to the jury emphasized the corpus delecti of rape and did not authorize conviction of lesser included offenses?

THE PARTIES

In the Circuit Court of Mobile County, Alabama, the Court of Criminal Appeals of Alabama and the Supreme Court of Alabama, the parties were: The State of Alabama, who is the Petitioner herein and Chris Prince, who is Respondent herein.

The matters at issue here were first raised in the Circuit Court of Mobile County, Alabama and have been at issue throughout these proceedings.

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OPINIONS BELOW

The opinion of the Court of Criminal Appeals of Alabama reversing and rendering Respondent Prince's conviction is not as yet reported but will be reported as follows:

Prince v. State, ____ So. 2d ____ (Cr. App. Ala., 1982)

A copy of the same is submitted in Appendix "A" to this petition.

The order of the Supreme Court of Alabama denying the writ of certiorari in this case is not as yet reported but will be reported as follows:

Ex parte: State; In re: Prince v. State, ____ So. 2d ____ (S. Ct. Ala., 1983)

A copy of the same is submitted in Appendix "B" to this petition.

JURISDICTION

The order of the Supreme Court of Alabama denying the writ in this case "...on federal constitutional grounds...." was issued on April 22, 1983, and this petition is filed within sixty days of that date.

The Jurisdiction of this Honorable Court is invoked under 28 United States Code, Section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

1. The Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States, which reads as follows:

> "No person shall be held to answer for capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the

militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (Emphasis supplied)

2. Section one of the Fourteenth Amendment to the Constitution of the United States which reads as follows:

"...All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws...."

STATUTORY PROVISIONS INVOLVED

Respondent Prince was charged with and acquitted of rape under Title 13A-6-61(a)(1), Code of Alabama, 1975, which reads as follows:

> "§13a-6-61. Rape in the first degree.
>
> ..."(a) A male commits the crime of rape in the first degree if:
>
> (1) He engages in sexual intercourse with a female by forcible compulsion;..." (See Appendix "C", page 24)

At issue in this case is whether that aquittal of rape barred a prosecution and conviction for robbery under Title 13A, Section 13A-8-43(a), Code of Alabama, 1975, which reads as follows:

> §13A-8-43. Robbery in the third degree.
>
> (a) A person commits the crime of robbery in the third degree if in the course of committing a theft he:

(1) Uses force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance; or

(2) Threatens the imminent use of force against the person of the owner or any person present with intent to compel acquiescence to the taking of or escaping with the property. (See Appendix "C", page 28)

STATEMENT OF THE CASE

I.

SUMMARY STATEMENT

Respondent Chris Prince was indicted for several offenses arising out of a violent attack on a young woman; this case involves two of these offenses: rape and robbery.

Prince was tried for rape first. The State's evidence on the corpus delecti of rape was weak and conflicting on vital points and was properly insufficient to prove rape as a matter of

law. By cross examination of the victim and the examining physician the defense emphasized these weaknesses and conflicts. On the other hand, the state's evidence as to the identity of Prince as the perpetrator of the attack was strong and was contradicted only the defendant's own testimony as to an alibi. After the State rested, the Defense moved to exclude the State's evidence on the grounds that the State had not proved a prima facie case of rape. The Court did not charge the jury on any lesser included offenses, and the jury acquitted Prince of rape.

Subsequently, Prince was tried for robbery. The evidence relating to the identity of Prince as the perpetrator was identical to that presented in the rape case, and it was not contested that the

perpetrator had stolen money from the victim. Prince was convicted of robbery.

On appeal the Court of Criminal Appeals of Alabama reversed and rendered Prince's robbery conviction under Ashe v. Swenson, (397 U.S. 436, 25 L. Ed. 2d 469, 90 S. Ct. 1189 [1970]). (Prince v. State, ____ So. 2d ____ [Cr. App. Ala., 1983]; Appendix "A") The Alabama Supreme Court declined to review the Court of Appeals' ruling "...on federal constitutional grounds...", saying that it could not distinguish Ashe v. Swenson, above from this case. (Prince v. State, ____ So. 2d [S. Ct. Ala., 1983]; Appendix "B")

II.

STATEMENT

As stated above, this case involves two trials: one for rape and the other for robbery. For the sake of clarity, each will be separately stated.

A.

THE RAPE CASE

Respondent Prince was indicted for rape in the first degree[1] and pleaded not guilty.[2]

On the trial of the case, the evidence in support of the rape charge came from the victim and the physician who examined her. The State's evidence on penetration[3] was imprecise and

---

[1] "(a) A male commits the crime of rape in the first degree if:
(1) He engages in sexual intercourse with a female by forcible compulsion:... (Title 13A, Section 13A-6-61, Code of Alabama, 1975; See Appendix "C", page 24)

[2]The record contains no pleadings from the rape trial, but the indictment for first degree rape and the plea of not guilty have been taken for granted.

[3]"The following definitions apply in ths article:
"(1) SEXUAL INTERCOURSE. Such term has its ordinary meaning and occurs upon any penetration, however slight; emission is not required...." (Title 13A, Section 13A-6-60, Code of Alabama, 1975; See Appendix "C", page 22; emphasis supplied)

probably insufficient[4], and, although non-consent was certainly implied by the victim, she was never asked directly if she consented to the intercourse. On cross-examination the defense brought out facts suggesting that the victim may not have been fully conscious or sober at the time of the actual rape. The Defense also raised questions as to the resistance made by the victim.[5] (D. Ex.[6], pp. R. 20-R. 59) The physician who

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[4]See the argument at pages 44-45, below.

[5]"The following definitions apply in this article:...
"(8) FORCIBLE COMPULSION. Physical force that overcomes earnest resistance...."
Section 13A-6-60, Code of Alabama, 1975; See Appendix "C", page 23 Emphasis supplied)

[6]"D. Ex. refers to the Defendant's Exhibit which is a transcript of the evidence in the rape trial and is a part of the record in this case.

examined the victim was unable to say whether her condition indicated rape. According to the doctor, there was evidence of sexual intercourse, but it may have occurred up to forty-eight (48) hours earlier. (D. Ex. pp. R. 70-R. 87)

As to the identity of Prince as the perpetrator of the attack, the State presented the evidence of the victim (who had observed the perpetrator for sometime prior to be struck in the head), and who gave the police a most detailed description of the perpetrator and identified Prince as the perpetrator shortly after the incident. (D. Ex. R. 31, R. 63. R. 69 and R. 87-91) In addition, the State presented the testimony of the police officer who, just minutes after the attack located the automobile which the perpetrator had stolen from the victim

being driven by Prince. (D. Ex. R. 102, R. 108) The defense presented an alibi through the defendant's own testimony. This testimony contradicted both that of the victim and the arresting officer. (D. Ex. pp. R. 142-167)

At the close of the State's evidence the defense made the following motion:

> "MR. ASHBEE [DEFENSE COUNSEL]: Your Honor, at this time the defense would move to exclude the State's evidence and to request a judgment of acquittal in favor of defendant on the basis that the State has not made out a prima facie case as to the indictments. And we request this as to all the charges in each of the indictments, specifically, we would also request these motions to be granted to the defendant with regard to the indictment concerning robbery...." (D. Ex. p. R. 140)

This was the occasion that Respondent Prince first raised the claim on which

he prevailed on appeal, namely, the State's failure to prove the corpus delecti of rape, collaterally estopped the robbery prosecution. The motion was overruled.

The Trial Court charged the jury in pertinent part as follows:

> "...There are many ways to state or describe the burden that is on the State of Alabama. I will tell you that before you can convict the accused on the indictment the prosecution must prove beyond a reasonable doubt each and every aspect of the elements of the offense charged. I will discuss these aspects with you momentarily. The law never imposes upon the defendant in a criminal case the burden or duty of calling any witness or producing any evidence. If two conclusions can be reasonably drawn from the evidence, one of innocence and one of guilt, the jury should adopt the one of innocence. The defendant enters this trial with a presumption of innocence. I have told you that though. And this presumption is a matter of

evidence and may in itself justify or require an acquittal even though, and generate a reasonable doubt and require an acquittal even though there would have been no reasonable doubt except for the presumption of innocence. Innocence of the defendant is presumed until his guilt is established by the evidence in all material aspects of the case beyond a reasonable doubt and to a moral certainty and it may also be said that evidence of guilt must be strong and cogent and unless it is so strong and cogent as to show that the defendant is guilty to a moral certainty, the defendant should be acquitted...." (D. Ex. pp. R. 172-R. 173; Emphasis supplied)

In addition the trial court charged the jury as follows:

"...Now, what are the elements of the offense of rape that the State must prove. The law says that man -- a male commits rape in the first degree if he engages in sexual intercourse with a female by forcible compulsion. Now what does this mean the State must prove? Well, the State must prove, first, that Chriss Prince is a male. Then the State must prove that he engaged in sexual intercourse and sexual intercourse has its ordinary

meaning and occurs upon any penetration however slight and that this sexual intercourse was accmplished by forceful compulsion. Forceful compulsion is defined as physical force that overcomes earnest resistance or a threat expressed or implied that places a person in fear of immediate death or serious physical injury...." (D. Ex. p. R. 175; Emphasis suppied)

The trial court did not charge on any lesser included offenses.[7] (D. Ex. pp. R. 171-R. 178)

Respondent Prince was acquitted of rape. (D.Ex. R.179)

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[7]The evidence would have supported several lesser included offenses including Assault in the first, second, or third degrees. (Title 13A, Sections 13A-6-20[a][4], 21 [a][1] and 22 [a][1], Code of Alabama, 1975) and sexual abuse in the first degree (Ibid, Section 13A-6-66[a][1]. See Appendix "C", pages 19-22 and 26)

B.

THE ROBBERY CASE

Respondent Prince was indicted for robbery in the first degree.[8] His plea was not guilty. (R. pp. 1-5)

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[8]"(a) A person commits the crime of robbery in the first degree if he violates section 13A-8-43 and he:

"(1) Is armed with a deadly weapon or dangerous instrument; or

"(2) Causes serious physical injury to another." (Title 13A, Section 13A-8-41, Code of Alabama, 1975)

"§13A-8-43. Robbery in the third degree.

"(a) A person commits the crime of robbery in the third degree if in the course of committing a theft he:

"(1) Uses force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance; or

"(2) Threatens the imminent use of force against the person of the owner or any person present with intent to compel acquiescence to the taking of or escaping with the property." (Ibid, Section 13A-8-43)

See Appendix "C", pages 27 -29.

Prior to the trial Prince filed a motion to dismiss raising again the matter at issue in this proceeding and claiming that the robbery charge should be dismissed because he had been acquitted of rape. This motion was overruled. (R. pp. 6-9)

The cause was tried on February 1-2, 1982. (R. pp. 10 and 15) Only the victim testified to the corpus delecti of robbery. She testified that Prince had stolen $70.00 from her by use of physical force. She stated that Prince told her that he had a gun, but she never saw it. (R. p. R. 28) The only reference to the rape in this trial was an unsolicited reference to it by the victim, which the trial court excluded from the jury's consideration. (R. p. R. 33) On cross examination the defense again questioned the victim's sobriety (R. p. R. 28) and

brought out again that she actually never saw a gun. (R. p. R. 42) (R. pp. R. 22, R. 34 and R. 37, R. 45) The evidence as to the identity of Prince as the perpetrator was, as the Court of Criminal Appeals found, identical to that presented in the rape case. (R. pp. R. 34, R. 37, R. 45-58, R. 60, R. 82 and R. 91-R. 101)

The Jury convicted Respondent Prince of robbery in the third degree.[9]

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[9]Presumably the jury found that Prince was not armed with a deadly or dangerous weapon at the time. Compare Title 13A, Sections 13A-8-41 and 43, Code of Alabama, 1975; Appendix "C", pages 27-29.

C.

APPEAL

Prince appealed to the Court of Criminal Appeals of Alabama. On December 28, 1982, the Court of Appeals reversed and rendered Prince's robbery conviction under this Honorable Court's decision in Ashe v. Swenson, (397 U.S. 436, 25 L. Ed. 2d 469, 90 S. Ct. 1189 [1970]). In applying Ashe the Court of Appeals looked only to the issue contested in the rape case by the defense evidence (i.e. identity) and ignored issues raised by the weakness of and conflicts in the State's evidence as well as matters raised by cross examination. In its opinion the Court of Criminal Appeals first set out the facts which the evidence presented by the State tended to prove. These facts were taken as

established, conflicts and important points brought out on cross examination being ignored. Then the Court then writes:

> "...Appellant's [i.e. Prince's] sole defense was an alibi and he was the only defense witness. He testified that...[Court set out a brief and accurate digest of Prince's testimony. Then the opinion continued]...Appellant, in summation, essentially conceded that the victim had been kidnapped, raped and robbed. His sole contention was that he was not the perpetrator of these crimes. He contended that the victim's blurred vision, and the bad lighting conditions led to her mis-identification...." (Prince v. State, ____ So. 2d ____ [Cr. App. Ala., 1983]; Appendix "A" page 7-8)

Prince, in the view of the Court of Criminal Appeals, "...essentially concede..." the rape, robbery and kidnapping by not introducing defense evidence to the contrary. The Court of

Appeals concluded:

> "We recognize that we are bound by the decision of the United States Supreme Court; however, serious reservations permeate our view of the Ashe decision. Be that as it may, we have absolutely no alternative under Ashe, not only to reverse this case, we are also compelled to render it.
>
> "REVERSED AND RENDERED.
>
> "All the Judges concur." (Prince v. State, ___ So. 2d ___ [Cr. App. Ala., 1983], Appendix "A", page 14)

The State applied for rehearing, but the application was overruled on February 1, 1983. (Appendix "A", page)

The Supreme Court of Alabama accepted the State's petition for a writ of certiorari, but on April 22, 1983, denied it, writing:

> "SHORES, JUSTICE.
>
> "The writ of certiorari is denied on federal constitutional grounds. We, like the Court of Criminal Appeals, are

unable to distinguish this case from Ashe v. Swenson, 397 U.S. 436 (1970).

"WRIT DENIED." (Prince v. State, ____ So. 2d [S. Ct. Ala., 1983]; Appendix "B"; emphasis supplied)

STATEMENT OF THE FACTS

The Court of Criminal Appeals of Alabama opinion contains a statement of the facts which is generally accurate except that it ignores matters brought out on cross examination, conflicts in the evidence and blends the evidence presented in the two trials. This statement is available to this Honorable Court in Appendix "A" at pages 1 to 10. Therefore, what is presented here will be an effort to briefly supplement the facts set out in the Court of Appeals' opinion.

I.

EVIDENCE RELATING TO THE CORPUS DELECTI OF RAPE AS PRESENTED IN THE RAPE TRIAL.

The victim testified that after the perpetrator had threatened her with a gun and had physically overpowered her at her apartment complex and forced her into her car, he drove her to Murphy High School. At that point the victim attempted to escape, but the perpetrator overpowered her in a terrific struggle during which the victim hit her head on the concrete several times. (D. Ex. R. 20-R. 22) The perpetrator told the victim to take her clothes off, which she did. The victim identified several blood stained items of clothing as her's. She stated that the blood stains were the result of the assault on her and that she was not

having her monthly period.[10] (D. Ex. pp. R. 22-R. 28) On the question of the element of sexual intercourse, the victim's testimony was general rather than specific.[11] She testified to two

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[10]"Q. Were you bleeding?

"A. I didn't have my period.

"Q. You did or didn't?

"A. Didn't." (D. Ex. p. 25)

This testimony would be apparently contradicted by the examining physician.

[11]The victim's most specific testimony on this key point was as follows:

"Q. Okay. He got on top of you. Then what happened?...

"A. He forced himself.

"Q. Okay. Describe if you can exactly what he did?

"A". He got on top of me and forced himself.

"Q. Did he force himself inside you?

"A". Yes....' (D. Ex. R. 28)

instances of sexual union, each lasting approximately ten (10) minutes.[12] (D. Ex. R. 28-R. 29)

On cross examination, the Defense brought out several times that at the time of the original abduction[12] as well as at the time of the actual sexual assault[13] the victim did not scream. The victim admitted that she never saw a gun

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[12]"Q. So would that be a total of twenty minutes...in all?

"A. About twenty minutes...." (D. Ex R. 29)

[13]"Q. ...But did you ever scream for help to anybody else in the apartments?

"A. No...." (D. Ex. R. 42)

[14]"Q. ...Did you ever scream or yell for help at that point [incident to the struggle at Murphy High School]?

"A. No...." (D. Ex. R. 50-R. 51)

or weapon[15] and that she did not resist the original abduction.[16] Further, the details of her undressing were carefully examined and the victim was led to contradict herself as to some of the details of how she came to remove her

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[15] "Q. [D]id you ever see a gun?

"A. No.

"Q. Did you ever see any kind of a weapon such as a stick?

"A. No.

"Q. Did you ever see anything at all in this person's hand?

"A. No...." (D. Ex. R. 41)

[16] "Q. Now while you were in the parking lot at Carriage Inn Apartments, did you ever struggle with this person to try and get away?

"A. No...." (D. Ex. p. R. 42)

clothing.[17] The defense brought out that the victim had medical problems which coupled with the blows to her head caused her vision to blur. (D. Ex. pp. R. 50 and R. 53-R. 56) (D. Ex. pp. R. 31-R. 69)

Doctor Andy John Wright examined the victim within a few hours of the attack. The doctor testified that at this time the victim had begun her menstral period, apparently contradicting the victim on this point. (D. Ex. p. R. 72-R. 73; Compare the testimony set out in note 10; page 23, above). The doctor stated that

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[17] "Q. ...Now, this person that attacked you, did they take your clothes off or did you take your clothes off?

"A. He proceeded to do it and I said I would do it.

"Q. You said you would do it?

"A. Yes...." (D. Ex. p. R. 51)

there were no cuts or tears to the victim's sexual organs and he described the victim as being, "...a woman accustomed to sexual intercourse...." (D. Ex. p. R. 73) Although the doctor would not testify that the victim had been raped, he did state that, "...It would have been certainly possible for her to have had sexual intercourse even unwilled sexual intercourse and to have had the examination that she had...." (D. Ex. p. R. 73) This was the doctor's strongest testimony as to the rape from the state's point of view. The doctor did confirm the presence of numerous external cuts, bruises and abrasions on the victim's body. (D. Ex. p. R. 70-R. 78)

On cross examination the doctor reiterated his dirct testimony. Based

on the number and condition of sperm present, the doctor set the time of the intercourse as follows: "...They had been there certainly less than 48 hours. In all likelihood less than 12 hours...." (D. Ex. p. R. 83) (D. Ex. p. R. 78-R. 86)

On this testimony the State's case for rape went to the jury.

II.

EVIDENCE RELATING TO ROBBERY.

Except for the testimony relating to rape, the victim's testimony in the robbery trial was substantially identical to that in the rape trial up to the point of the attack at Murphy High School (R. pp. R. 22-R. 34), except as follows: The victim testified that she held two jobs, a full time position at a loan company

and a part-time position as a cocktail waitress at a lounge. (R. p. R. 23) On the evening in question she had just received her wages in the amount of $70.00, which was in her purse. (R. p. R. 26) She testified that incident to her struggle with Respondent Prince, she tried to remove her purse from the car. Prince, however, took the purse from her by force, and removed from it the $70.00 she had earned. (R. p. R. 33) It was on this evidence that the robbery case went to the jury.

III.

EVIDENCE RELATING TO IDENTIFICATION IN BOTH TRIALS.

The Court of Criminal Appeals correctly found that the identification evidence was identical in both trials. Briefly, that evidence was as follows:

Prince was noticed by the victim at her apartment complex before the attack began. (D. Ex. pp. R-13-R-14; R. p. R. 27)

When the victim reached her car, Prince accosted her and forced her into her car, which he then drove to Murphy High School. (D. Ex. R-27-R-28; R. pp. R-14-R-15)

At Murphy High School the victim fought with Prince. (D. Ex. R-20-R-22; R. pp. R-30-R-32)

After escaping from Respondent Prince, the victim fled some distance until she spotted a police unit, which she flagged down. She gave the officers a complete description of Prince and her own automobile in which Prince had fled. (D. Ex. R. pp. R-30-R-31 & R-88-R-89; R. pp. R-34-36 & R-92-R-93)

Officer James Allen of the Mobile

Police Department was on routine patrol when he received a radio alert concerning the victim's automobile and the perpetrator-occupant. This was within the hour of the attack. Officer Allen observed the victim's automobile driven by a person matching the description of the perpetrator. Officer Allen pursued the vehicle until the perpetrator lost control of the vehicle and abandoned it. At this time the officer, in hot pursuit observed the driver of the victim's automobile get out of the car. (D. Ex. pp. R-102-106; R. pp. R-60-R-65)

Officer Allen positively identified Respondent Prince as the man he saw fleeing from the victim's automobile. (D. Ex. p. R-106 [18] &

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[18] "...Q. Do you see that person here today?

* * *

A. Yes. It's the Defendant right there...." (D. Ex. p. R-106)

R-67-R-68) [19]

Officer Allen lost sight of Respondent Prince momentarily but soon relocated him and arrested him. (D. Ex. R-106-108; R-65-R-68)

Minutes later the victim positively identified Respondent Prince as the man who had attacked and robbed her. (D. Ex. pp. R-89-91; R-36 & R-95)

The victim repeated this identification in open court. (D. Ex. p. 68; [20] R. pp. R-36-R-37)

19"...Q. And was that the same person you had seen leave...[the victim's] ...car?

A. Yes, it was..." (R. pp. R-67-R-68)

20"...Q. Now, ...[victim's name]..., of course, you understand the seriousness of the charges against the Defendant. I want to ask you are you absolutely sure that you made a correct identification?

A. Yes...." (D. Ex. p. R-68)

The Court of Criminal Appeals accurately digested the Defense evidence on identification as follows:

> "...Appellant's sole defense was an alibi and he was the only witness. He testified that he had spent six to eight hours on the night of April 10 and the morning of April 11 at a bar in Touminville. He spent most of that time dancing. He had nothing to drink but did smoke one joint. He was walking home between 4:00 A.M. and 5:00 A.M. when he noticed a police car trying to run him down. He ran to a friend's home and crawled in a window where he was soon apprehended by the police.
>
> Appellant explained that he was scared of the police and always ran when they approached him. He explained that he was a hardworking laborer and must have acquired the grass stain on his shirt and the soiled socks at work. He explained that he had worn his red undershorts for about a week prior to April 11 and that he had had sexual intercourse with a girlfriend earlier that week. He did not know his blood type. He did not know whether or not the girl he had had intercourse with was at that time in her period...."
> (Prince v. State, ___ So.2d ___ [Cr.App.Ala., 1983]; Appendix "A", page 7-8)

SUMMARY OF THE ARGUMENT

This case is the antithesis of Ashe v. Swenson, (397 U.S. 436, 25 L.Ed.2d 469, 90 S.Ct. 1189 [1970]).

In Ashe v. Swenson, above, and earlier in United States v. Oppenheimer, (242 U.S. 85, 61 L.Ed. 161, 37 S.Ct. 68, 3 A.L.R. 516 [1916]) this Honorable Court held that in applying the doctrine of collateral estoppel, the Court must (1) examine the entire record of the previous trial, including the pleadings, evidence, charge, etc. and (2) determine whether a rational jury could have grounded its verdict on any issue other than the one which the defendant seeks to foreclose in the second trial. In the instant case the Alabama Courts violated both parts of this rule.

In determining what issues were contested in the rape trial, the Alabama

Courts looked only to the matters contested by defense evidence and ignored the weakness of the evidence of rape, matters brought out on cross examination and the Trial Court's charge to the Jury. In determining that identification was the sole basis of the acquittal in the rape case, the Alabama Courts ignored the fact that the evidence was probably insufficient to prove rape. (Reynolds v. State, 274 Ala. 171, 146 So.2d 85 [1962]), as well as suggestions of matters which often produce arbitrary verdicts of acquittal in rape cases, e.g. insufficient resistance and possible unchastity by the victim. Under the Trial Court's charge in the rape case (See Sealfon v. United States, 332 U.S. 575, 92 L.Ed. 180, 68 S.Ct. 237 [1948] and Turner v. Arkansas, 407 U.S. 366, 32 L.Ed.2d 798, 92 S.Ct. 2096 [1972]), the

jury could have acquitted Respondent Prince on numerous grounds relating to rape but having nothing to do with robbery. Compare United States v. Adams, 281 U.S. 202, 74 L.Ed. 807, 50 S.Ct. 269 (1930). All things on balance, it is far more likely that the jury acquitted Prince of rape on the insufficiency of the evidence of rape than any other issue.

There is simply no way that the rulings of the Alabama Appellate Courts can be reconciled with any of this Honorable Court's decisions on collateral estoppel.

ARGUMENT

The Alabama Courts were "...unable to distinguish this case from Ashe v. Swenson, 397 U.S. 436 [25 L.Ed.2d 469, 90 S.Ct. 1189] (1970)...." See Appendix "B". This is remarkable, since this case is nearly the antithesis of Ashe. Ashe was accused of committing the same crime, robbery, on different persons; this Respondent was accused of committing entirely different crimes, rape and robbery on the same person. In Ashe, "...The proof that an armed robbery had occurred...was unassailable...." (397 U.S. 436, 438, 25 L.Ed.2d 469, 472); here the evidence that a rape had occurred was weak and may have been insufficient as a matter of law.[21] In Ashe, "...Defense counsel made no attempt to question... [the victims']...testimony regarding the holdup...." (Ibid), while here defense

[21]See page 44-45, below.

counsel vigorously questioned the resistance made by the victim, bringing out that she did not scream, submitted to the abduction although she never saw a gun and took her own clothes off rather than let the defendant do it. In addition, defense counsel moved to exclude the State's evidence for failure to prove a prima facie case of rape. As to the identification, in Ashe "...[T]he State's evidence that the petitioner [i.e. Ashe] had been one of the robbers was weak...." (Ibid). In fact, no witness could positively identify Ashe as one of the masked robbers. In the instant case, the perpetrator wore no mask and Respondent Prince was positively identified by the victim as the perpetrator shortly after the attack and at trial. In addition, Officer Allen positively identified Respondent Prince

as the person he saw abandoning the vehicle the perpetrator stole from the victim. The instant case is, to say the least, easily distinguishable from Ashe v. Swenson, above.

REASON FOR GRANTING THE WRIT: CONFLICT WITH PRIOR SUPREME COURT DECISIONS.

In Ashe v. Swenson, (397 U.S. 436, 25 L.Ed.2d 469, 90 S.Ct. 1189 [1970]) this Honorable Court read into the Fourteenth Amendment the doctrine of collateral estoppel. The doctrine of collateral estoppel in criminal cases goes back to United States v. Oppenheimer, (242 U.S. 85, 61 L.Ed. 161, 37 S.Ct. 68, 3 A.L.R. 516 [1916]). In Oppenheimer this Court ruled that where two offenses occurred at

the same time, an acquittal of one under the statute of limitations barred the second. As applied to the states in Ashe, in cases involving general verdicts, the doctrine has two parts:

> "[1]...Where a previous judgment of acquittal was based upon a general verdict, as is usually the case...[the doctrine of collateral estoppel]..requires a court to examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, ...[and] [2. Determine]...whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration...." (Ash v. Swenson, 397 U.S. 436, 444, 25 L.Ed.2d 469, 475-476, 90 S.Ct. 1189 [1970])

The Alabama Courts violated both parts of this principle.

I.

CONFLICT ON HOW THE ISSUES IN THE FIRST TRIAL SHOULD BE IDENTIFIED.

In determining what were the issues in the rape trial the Alabama Courts did not look beyond the defense evidence. The Court of Criminal Appeals of Alabama did not even have before it the pleadings in the rape case, as required by Ashe v. Swenson, (397 U.S. 436, 25 L.Ed.2d 469, 90 S.Ct. 1189 [1970]). See Duncan v. Tennessee, 405 U.S. 127, 31 L.Ed.2d 86, 92 S.Ct. 785 (1972). This may not have been harmful, but the Court's treatment of the evidence was grossly harmful.

The Alabama Courts considered that the issues raised and decided in the rape case were only those touched on by defense evidence. Respondent Prince presented evidence only on identification, and the Alabama Courts concluded

that, therefore, identification was the only issue in the rape case. Obviously, Respondent Prince could not as a practical matter have presented defense evidence attempting to prove: He wasn't there, but, if he was, he did not have sexual intercourse with this woman, and, if he did, she consented, and, if she didn't consent, she didn't make "...earnest resistance...."[22] However, Respondent Prince raised each of these points: An alibi by defense evidence and the other points by cross examining the State's witnesses. Even if Prince had done nothing at all, the weakness of the State's evidence as to the corpus delecti of rape should have been examined by the Appellate Court. But, the Alabama Courts looked no farther than the defense

---

[22] Title 13A, Section 13A-6-60(8), Code of Alabama, 1975; Appendix "C", page 23.

evidence, and this conflicted with the first part of the Ashe doctrine. Compare Simpson v. Florida, (403 U.S. 384, 29 L.Ed.2d 549, 91 S.Ct. 1801 [1971]) where a case was vacated and remanded under Ashe because the trial judge did not review the entire transcript of the first trial, in applying the collateral estoppel doctrine. See on remand Simpson v. State, 250 So.2d 656 (S.Ct. Fla. 1971).

II.

CONFLICT AS TO DETERMINING WHETHER IDENTIFICATION WAS DECIDED BY THE JURY IN THE RAPE CASE.

Having decided that identification was the only issue in the rape case, the state courts naturally decided that it was decided by the verdict in that case. Had the state courts looked beyond the defense evidence, they would have seen that there were numerous issues relating

only to rape on which the jury could have acquitted Respondent Prince of rape, even if they believed that he had attacked the victim.

The State's evidence as to the corpus delecti of rape was extremely weak. The victim's testimony indicated that Prince forced his penis inside her, but the prosecutor never asked the victim about the precise nature of the pentration. For all that appears, the victim could have been testifying to deviate sexual intercourse[23], in which case the crime would have been criminal sodomy[24] not rape. The evidence was probably

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[23]Title 13A, Section 13A-6-60(2), Code of Alabama, 1975, Appendix "C", page 23.

[24]Ibid, Sections 13A-6-63 and 64, Appendix "C", pages 24-26.

insufficient to prove rape.[25] Had Prince's motion to exclude the State's

---

[25] Reynolds v. State, 274 Ala. 171, 146 So.2d 85 (1962):

> "...'Carnal Knowledge', as used in the statute, means sexual intercourse, that is, the actual penetration of the male sexual organ into the sexual organ of the female...." (146 So.2d 85-86)
>
> "...There is no evidence whatever supporting the charge of carnal knowledge. Nor does the evidence support the charge of abuse in the attempt to have carnal knowledge. While there is ample evidence showing an abuse of the child, we find no evidence showing an abuse of her genital or sexual organs..."
>
> "The medical testimony, as well as that of other witnesses, shows only that the rectum and the area around the rectum were bruised or injured. We find nothing whatever in the evidence showing any abuse or injury of the girl's genital or sexual organs...." (146 So.2d 85, 87)

evidence addressed only the sufficiency of the evidence of rape rather than compounding it with collateral estoppel, the trial court would probably have granted it. Had the jury convicted Prince of rape, the conviction would no doubt have been set aside on motion for a new trial or appeal.

In addition to the sufficiency of the evidence, how often have accused rapists been acquitted merely because their victims "didn't scream loud enough" or "didn't fight hard enough" or "didn't defend their 'virtue' with their lives"? Rational people condemn such verdicts, but it would be naive to deny that they happen. Prince raised each of these issues by cross examining the victim. Juries also often acquit accused rapists on the grounds that the victim was

allegedly not chaste.[26] The examining physician's testimony that the victim was a "...woman accustomed to sexual intercourse...." (D. Ex. p. R-73), could certainly have been taken by some to mean that she was unchaste.

Then there is the trial court's charge to the jury on rape. See Sealfon v. United States, 332 U.S. 575, 92 L.Ed. 180, 68 S.Ct. 237 (1948) and Turner v. Arkansas, 407 U.S. 366, 32 L.Ed.2d 798, 925 S.Ct. 2096 (1972). The defense had brought out that incident to the struggle with Prince, the victim had hit her head so hard that her vision blurred. The trial court charged the jury in detail on the corpus delecti of rape and stated

---

[26]This is such a problem that many states, including Alabama, have by statute limited the extent to which an accused rapist can inquire into the victim's general sexual activities. See Title 12, Section 12-21-203, Code of Alabama, 1975.

the standard of proof in pertinent part as follows:

> "...The main provision of the law is that there should not be a conviction under the evidence unless to a moral certainty it excludes every reasonable hypothesis other than that of the guilt of the accused...." (D. Ex. p. R-173)

Now suppose that instead of merely suffering blurred vision, the victim had actually been rendered momentarily unconscious or semi-conscious by the blows to her head and in that state and in her terror, she had fantasized two rapes lasting a total of twenty minutes. Would this not be a "reasonable hypothesis" explaining the evidence "other than the defendant's guilt" of rape? In this context, it must be recalled that the jury was not asked to decide if a rape had occurred but only whether the State proved rape beyond a reasonable doubt. Perhaps if the jury

had been asked to consider lesser included offenses, they would have returned such a verdict, but they were not asked to consider such offenses. Their choice was guilty of rape or not guilty. It can't be said that a not guilty verdict on the rape charge represented a finding that no offense at all took place or that the defendant was not guilty of participation in the attack on the victim.

The importance of there being no rational basis for the first verdict other than a favorable finding on the issue which the defendant seeks to foreclose was made clear long before Ashe v. Swenson, (397 U.S. 436, 25 L.Ed.2d 469, 90 S.Ct. 1189 [1970]). Fourteen years after he authored the opinion in United States v. Oppenheimer, (242 U.S. 85, 61 L.Ed. 161, 37 S.Ct. 68, 3 A.L.R. 516 [1916]), Justice Holmes authored

opinion in United States v. Adams, (281 U.S. 202, 74 L.Ed. 807, 50 S.Ct. 269 [1930]). Adams had been acquitted of fraud by making false entries in a bank's books. He was later charged with making other false entries as part of the same fraud (Case No. 281) and with making a false report of the bank's financial condition based on the various false entries (Case No. 282). The District Court held that both prosecutions were barred under Oppenheimer. This Honorable Court agreed with regard to Case No. 281 (false entries) but reversed as to Case No. 282 (false report). Justice Holmes' reasoning was as follows:

> "...An alternative possible ground [for the acquittal in the false entries case] is that although the entries were untrue the defendant believed them to be true or for some reason believed them to be justified. However unlikely

> it may be that there was a different intent at the time of the later act from that with which the entries were made in the books of the bank, it is entirely possible that the defendant supposed himself to be acting lawfully at the earlier moment, but that he had acquired more accurate knowledge before he signed the report, that he then knew that it was false and was guilty then although not before...." (281 U.S. 202, 205, 74 L.Ed. 807, 809; emphasis supplied)

Thus, the doctrine of collateral estoppel does not apply where there is an alternative possible ground for the first verdict which does not involve the issue which the defendant seeks to foreclose, ...[h]owever unlikely..." that ground may be. In the instant case, there is not only a possible ground in the alternative to the non-identification of the accused as the perpetrator for the acquittal in the rape case, that alternative ground, the insufficiency of the

proof of rape is, all things on balance, the most likely ground for the acquittal. Compare United States v. Giarratano, 622 F.2d 153 (5th Cir. 1980); State v. DeSchepper, 304 Minn. 399, 231 N.W.2d 294, 89 A.L.R. 3rd. 1084 (1975) and Jackson v. Follette, 462 F.2d 1041 (2nd Cir. 1972); cert. den. 409 U.S. 1045, 34 L.Ed.2d 496, 93 S.Ct. 544.

SUMMATION

There is simply no way that the decisions of the Alabama Appellate Courts in this case can be reconciled with any decision which this Honorable Court has ever handed down on collateral estoppel.

CONCLUSION

In conclusion, the Petitioner, the State of Alabama, respectfully submits that the decisions and opinions of the Honorable Court of Criminal Appeals and Supreme Court of Alabama in this case present conflicts with every prior decision and opinion of this Honorable Court on collateral estoppel under the Fifth and Fourteenth Amendments to the U.S. Constitution. For this reason the Petitioner prays that this Honorable Court will issue the writ of certiorari and review the decisions and opinions of the Honorable Appellate Courts of Alabama and on such review will reverse the decisions of said Courts holding that Respondent Prince's acquittal of rape

barred his prosecution and conviction of robbery in the third degree.

Respectfully submitted,

CHARLES A. GRADDICK
ATTORNEY GENERAL

JOSEPH G. L. MARSTON, III
ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, an Assistant Attorney General of Alabama, a member of the Bar of the Supreme Court of the United States and one of the Attorneys for the State of Alabama, Petitioner, do hereby certify that on this _____ day of June, 1983, I did serve the requisite number of copies of the foregoing on the Attorney for Chris Prince, Respondent, by mailing same to him, first class postage prepaid and addressed as follows:

Hon. G. Wayne Ashbee
Attorney at Law
Suite 110
Two Office Park
Mobile, Alabama 36609

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82-2079

Office - Supreme Court, U.S.
FILED
JUN 16 1983
ALEXANDER L. STEVAS,
CLERK

NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1982

STATE OF ALABAMA,

Petitioner

V.

CHRIS PRINCE,

Respondent

APPENDIX

TO THE PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT AND
COURT OF CRIMINAL APPEALS OF ALBAMA

OF

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ATTORNEY GENERAL OF ALABAMA

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ATTORNEYS FOR PETITIONER

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APPENDIX A

December 28, 1982

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 1982-83

8 DIV. 636

Chris Prince

v.

State

Appeal from Mobile Circuit Court

DeCARLO, JUDGE

Robbery; ten years imprisonment.

Prince was indicted for the kidnapping, rape, and robbery of a young Mobile woman. All three charges arose from a series of events occurring in the early morning hours of April 11, 1981.

The victim was accosted by a young black man as she unlocked her car in the parking lot of her apartment complex around 3:00 o'clock on the morning of April 11, 1981. The man shoved her into the car and then followed her in. He told the victim not to "try anything" because he had a gun. She could not escape through the door on the passenger's side of her automobile because that door was broken and could not be opened from the inside.

The man drove to a side alley next to Murphy High School in Mobile. When he stopped the car, the victim attempted to escape by rolling down her window and opening the right front door from the outside. As she exited, however, her abductor lunged after her and grabbed her with both hands around her throat. She was able to pull him out of the car on that side, where they wrestled in the grass,

and dirt, and on the asphalt, until he eventually overpowered her. He hit her several times and threw her down on the pavement. Her head hit so hard on the pavement that her vision became blurred. In this condition and in the midst of continuing threats, the victim was raped twice by her attacker.

After the attack, the victim escaped. She attempted to take her purse but her attacker grabbed it, removed the seventy dollars from her wallet and threw the purse on the back seat. The victim fled and hid in some bushes nearby until her assailant had driven away in her automobile.

The victim then walked several blocks and flagged down a police car. She gave the officers a description of her assailant, down to his undershorts, and a description of her automobile. The police

officers immediately broadcast these descriptions on their police radio.

Within minutes another police officer on routine patrol spotted the victim's automobile. When he pulled in behind it, the driver, a young black man fitting the victim's description of her attacker, speeded up in an effort to elude the police officer. After a short high speed chase, the victim's automobile "spun out" at a turn and hit a tree. The officer giving chase was no more than twenty feet away when the driver exited the wrecked vehicle and fled on foot. The officer pursued this man, first in his police car and eventually on foot. He lost sight of the suspect for a few moments but then spotted him inside a well lighted room of a residence. The suspect had crawled in the home through an open window.

This suspect, later identified as the appellant, Chris Prince, was apprehended and transported back to the scene of the victim's wrecked automobile. The victim was seated in the front seat of a police car, the headlights of which were pointed directly at the vehicle in which the appellant was sitting, and she identified the appellant as her abductor. She was unequivocal even though her vision was admittedly blurred and the lighting conditions were not excellent. (It was "daybreak" when she made this positive identification.)

The appellant was first tried for rape in case number CC-81-1578. During that trial the victim related the details of the horrible attack upon her and positively identified the appellant in court as the perpetrator of the attack.

The police officer who apprehended the appellant likewise positively identified the appellant in court as the man he saw exiting the victim's automobile, the same man that he pursued and eventually arrested.

The State's evidence showed that the appellant was wearing a black shirt, blue jeans, and red undershorts ("jogging shorts") which exactly matched the description the victim had given the police after her attack but before appellant's arrest. The evidence revealed that the appellant's black shirt had grass stains on one shoulder and that his socks were soiled with mud. The red jogging shorts were soiled with semen and with blood which matched the victim's type. (The victim had experienced some vaginal bleeding during the rape incidents.) The bloodstains on

the appellant's jogging shorts (and on a pair of red jockey shorts which appellant was wearing underneath the jogging shorts) were in the crotch areas.

Appellant's sole defense was an alibi and he was the only defense witness. He testified that he had spent six to eight hours on the night of April 10 and the morning of April 11 at a bar in Touminville. He spent most of that time dancing. He had nothing to drink but did smoke one "joint." He was walking home between 4:00 A.M. and 5:00 A.M. when he noticed a police car "trying to run him down." He ran to a friend's home and crawled in a window where he was soon apprehended by the police.

Appellant explained that he was scared of the police and always ran when they approached him. He explained that he

was a hardworking laborer and must have acquired the grass stain on his shirt and the soiled socks at work. He explained that he had worn his red undershorts for about a week prior to April 11 and that he had had sexual intercourse with a girlfriend earlier that week. He did not know where the blood on his undershorts came from. He did not know his blood type. He did not know whether or not the girl he had had intercourse with was at that time "in her period."

Appellant, in summation, essentially conceded that the victim had been kidnapped, raped and robbed. His sole contention was that he was not the perpetrator of these crimes. He contended that the victim's blurred vision, and the bad lighting conditions led to her misidentification.

Although the evidence seems overwhelmingly against the appellant, the jury returned a general verdict of not guilty. Since the appellant conceded that the victim had been raped, the only issue left for the jury, an issue which the jury decided in appellant's favor, was the validity of appellant's identification. In other words, the jury found that the appellant was not the man who raped the victim.

After being acquitted in the rape case, appellant was tried on the robbery charge stemming from this same series of events. The robbery trial disclosed to the jury evidence nearly identical to that disclosed during the rape trial. This second jury found appellant guilty.

I

At the beginning of the robbery trial the appellant submitted to the trial court a "Motion to Dismiss (PLEA OF AUTREFOIS ACQUIT)" on the grounds that the only controverted issue would be appellant's identification and that this issue had already been decided in his favor in the first trial. The trial court denied the motion. It is this denial that appellant cites as the sole error in this appeal.

The foundation of appellant's argument, here, is "collateral estoppel." A child of civil law, this principle was adopted by federal criminal law at least as early as United States v. Oppenheimer, 242 U.S. 85 (1916). In Ashe v. Swenson, 397 U.S. 436 (1970), the United States Supreme Court held that "collateral estoppel" is embodied in the Fifth Amendment guarantee against double jeopardy and is applicable

to the states through the Fourteenth Amendment. In substance, the court defined "collateral estoppel" as the bar preventing relitigation of a specific issue of ultimate fact when that issue has already been determined between the same parties by a valid and final judgment.

The defendant in Ashe was accused of being one of three or four men who robbed several poker players during a friendly game. He was tried and acquitted for the robbery of one of the poker players. The sole contested issue was identification and the jury found that the defendant was not sufficiently identified as one of the robbers. That specific issue of ultimate fact, i.e. the identification of the defendant, was, therefore, conclusively and finally litigated in the defendant's favor. The court ruled that his timely plea of

former jeopardy founded on "collateral estoppel," and asserted at a subsequent trial for the robbery of another of the poker players, should have been a bar to the second trial.

The court recognized the difficulty of determining whether or not a particular "issue of ultimate fact" has conclusively been litigated, and, therefore, set forth the requirement that reviewing courts examine the records of the prior proceedings. The court found in Ashe that the only rationally conceivable issue in dispute at defendant's first trial was his identity as one of the robbers, and that this issue was conclusively determined by the jury's not guilty verdict. See also Simpson v. Florida, 403 U.S. 384 (1971) and Turner v. Arkansas, 407 U.S. 366 (1972).

The appellant in this case conceded at both trials that the victim had been kidnapped, raped, and robbed. Therefore, "identity" was the only controverted issue. Not only does it defy comprehension, but it is beyond our wildest imagination how any jury could have found this man not guilty in light of the overwhelming evidence presented against him. Nevertheless, the verdict of acquittal in the rape case was conclusive and the identity issue.

We recognize that we are bound by the decision of the United States Supreme Court; however, serious reservations permeate our view of the Ashe decision. Be that as it may, we have absolutely no alternative under Ashe, not only to reverse this case, we are also compelled to render it.

REVERSED AND RENDERED.

All the Judges concur.

FEBRUARY 1, 1983

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

1 Div. 371

Chris Prince

v.

State

Appeal from Mobile Circuit Court
Number CC-81-1576

IT IS ORDERED THAT the application for rehearing be and the same is hereby overruled. It is further ordered that the motion for finding of additional facts under Rule 39(k), Alabama Rules of Appellate Procedure, be and the same is denied.

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
P. O. BOX 351
MONTGOMERY, 36101

May 20, 1983

JOHN O. HARRIS
Presiding Judge
JOHN C. TYSON, III
JOHN P. DeCARLO
JOHN G. BOOKOUT
WILLIAM M. BOWEN, JR.
Judges

MOLLIE JORDAN
Clerk

Honorable James F. Hampton
Attorney at Law - Special Assistant
Attorney General
567 South Hull Street
Montgomery, Alabama 36140

Dear Mr. Hampton:

RE: Chris Prince v. State of Alabama,
1 Div. 371, Mobile, Circuit
Court Number CC-81-1576

The Court of Criminal Appeals has today granted a stay of sixty (60) days from April 22, 1983, to allow filing of a petition for writ of certiorari in the United States Supreme Court. This stay will remain in effect until action is taken on the petition, and if petition is granted, until a decision is rendered by the United States Supreme Court.

The certificate of final judgment has been recalled from the lower court pending determination by the United States Supreme Court, but the certificate will be reissued upon the expiration of the sixty-day stay unless this Court is furnished with proof of the filing of said petition in the United States Supreme Court.

Yours very truly,

/s/ Mollie Jordan

Clerk

cc: Clerk, Mobile Circuit Court
Office of the Attorney General
File
Hon. G. Wayne Ashbee, Attorney for Appellant

APPENDIX B

April 29, 1963

THE STATE OF ALABAMA ---- JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1982-83

Ex parte: State of Alabama

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

(In re: Chris Prince

82-452 v.

State of Alabama)

SHORES, JUSTICE.

The writ of certiorari is denied on federal constitutional grounds. We, like the Court of Criminal Appeals, are unable to distinguish this case from Ashe v. Swenson, 397 U.S. 436 (1970).

WRIT DENIED.

Torbert, C.J., Maddox, Jones, and Beatty, JJ., concur.

APPENDIX C

TITLE 13A
CRIMINAL CODE

* * *

CHAPTER 6.

OFFENSES INVOLVING DANGER TO THE PERSON.

* * *

ARTICLE 2.

ASSAULTS.

§13A-6-20. Assault in the first degree.

(a) A person commits the crime of assault in the first degree if:

(1) With intent to cause serious physical injury to another person, he causes serious physical injury to any person by means of a deadly weapon or a dangerous instrument; or

(2) With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or

organ of his body, he causes such an injury to any person; or

(3) Under circumstances manifesting extreme indifference to the value of human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to any person; or

(4) In the course of and in furtherance of the commission or attempted commission of arson in the first degree, burglary in the first or second degree, escape in the first degree, kidnapping in the first degree, rape in the first degree, robbery in any degree, sodomy in the first degree or any other felony clearly dangerous to human life, or

of immediate flight therefrom, he causes a serious physical injury to another person.

(b) Assault in the first degree is a Class B felony. (Acts 1977, No. 607, p. 812, §2101.)

§13A-6-21. Assault in the second degree.

(a) A person commits the crime of assault in the second degree if:

(1) With intent to cause serious physical injury to another person, he causes serious physical injury to any person; or

(2) With intent to cause physical injury to another person, he causes physical injury to any person by means of a deadly weapon or a dangerous instrument; or

(3) He recklessly causes serious physical injury to another person by

means of a deadly weapon or a dangerous instrument; or

(4) For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness or other physical or mental impairment or injury to another person by administering to him, without his consent, a drug, substance or preparation capable of producing the intended harm.

(b) Assault in the second degree is a Class C felony. (Acts 1977, No. 607, p. 812, §2102.)

§13A-6-22. Assault in the third degree.

(a) A person commits the crime of assault in the third degree if:

(1) With intent to cause physical injury to another person, he causes physical injury to any person; or

(2) He recklessly causes physical injury to another person; or

(3) With criminal negligence he causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or

(4) With intent to prevent a peace officer from performing a lawful duty, he causes physical injury to any person.

(b) Assault in the third degree is a Class A misdemeanor. (Acts 1977, No. 607, p. 812, §2103.)

* * *

§13A-6-60. Definitions.

The following definitions apply to in this article:

(1) SEXUAL INTERCOURSE. Such term has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.

(2) DEVIATE SEXUAL INTERCOURSE. Any act of sexual gratification between persons not married to each other, involving the sex organs of one person and the mouth or anus of another.

(3) SEXUAL CONTACT. Any touching of the sexual or other intimate parts of a person not married to the actor, done for the purpose of gratifying the sexual desire of either party.

* * *

(8) FORCIBLE COMPULSION. Physical force that overcomes earnest resistance or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or another person. (Acts 1977, No. 607, p. 812, §2301.)

§13A-6-61. Rape in the first degree.

(a) A male commits the crime of rape in the first degree if:

(1) He engages in sexual intercourse with a female by forcible compulsion; or

(2) He engages in sexual intercourse with a female who is incapable of consent by reason of being physically helpless or mentally incapacitated; or

(3) He, being 16 years or older, engages in sexual intercourse with a female who is less than 12 years old.

(b) Rape in the first degree is a Class A felony. (Acts 1977, No. 607, p. 812, §2310.)

* * *

§13A-6-63. Sodomy in the first degree.

(a) A person commits the crime of sodomy in the first degree if:

(1) He engages in deviate sexual intercourse with another person by forcible compulsion; or

(2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being physically helpless or mentally incapacitated; or

(3) He, being 16 years old or older, engages in deviate sexual intercourse with a person who is less than 12 years old.

(b) Sodomy in the first degree is a Class A felony. (Acts 1977, No. 607, p. 812, §2315.)

§13A-6-64. Sodomy in the second degree.

(a) A person commits the crime of sodomy in the second degree if:

(1) He, being 16 years old or older, engages in deviate sexual

intercourse with another person less than 16 and more than 12 years old.

(2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being mentally defective.

(b) Sodomy in the second degree is a Class C felony. (Acts 1977, No. 607, p. 812, §2316; Acts 1979, No. 79-471, p. 862, §1.)

* * *

§13A-6-66. Sexual abuse in the first degree.

(a) A person commits the crime of sexual abuse in the first degree if:

(1) he subjects another person to sexual contact by forcible compulsion; or

(2) He subjects another person to sexual contact who is incapable of consent by reason of being physically

helpless or mentally incapacitated; or

(3) He, being 16 years old or older, subjects another person to sexual contact who is less than 12 years old.

(b) Sexual abuse in the first degree is a Class C felony. (Acts 1977, No. 607, p. 812, §2320.)

* * *

CHAPTER 8.

OFFENSES INVOLVING THEFT.

* * *

§13A-8-41. Robbery in the first degree.

(a) A person commits the crime of robbery in the first degree if he violates section 13A-8-43 and he:

(1) Is armed with a deadly weapon or dangerous instrument; or

(2) Causes serious physical injury to another.

(b) Possession then and there of an article used or fashioned in a manner to lead any person who is present reasonably to believe it to be a deadly weapon or dangerous instrument, or any verbal or other representation by the defendant that he is then and there so armed, is prima facie evidence under subsection (a) of this section that he was so armed.

(c) Robbery in the first degree is a Class A felony. (Acts 1977, No. 607, p. 812, §3305.)

* * *

§13A-8-43. Robbery in the third degree.

(a) A person commits the crime of robbery in the third degree if in the course of committing a theft he:

(1) Uses force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance; or

(2) Threatens the imminent use of force against the person of the owner or any person present with intent to compel acquiescence to the taking of or escaping with the property.

(b) Robbery in the third degree is a Class C felony. (Acts 1977, No. 607, p. 812, §3307.)

CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, an Assistant Attorney General of Alabama, a member of the Bar of the Supreme Court of the United States and one of the Attorneys for the State of Alabama, Petitioner, do hereby certify that on this _____ day of June, 1983, I did serve the requisite number of copies of the foregoing on the Attorney for Chris Prince, Respondent, by mailing same to him first class postage prepaid and addressed as follows:

Honorable G. Wayne Ashbee
Attorney at Law
Suite 110
Two Office Park
Mobile, Alabama 36609

JOSEPH G. L. MARSTON, III
ASSISTANT ATTORNEY GENERAL

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Supreme Court, U.S.
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82-2079

NO. _____

IN THE SUPREME COURT OF THE

UNITED STATES

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SUPREME COURT, U.S.

OCTOBER TERM, 1982

STATE OF ALABAMA,

Petitioner,

V.

CHRIS PRINCE,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT AND COURT OF CRIMINAL APPEALS OF ALABAMA

OF

CHRIS PRINCE

BY

G. WAYNE ASHBEE, Esquire
Two Office Park
Suite 110
Mobile, Alabama 36609
(205) 343-6455

ATTORNEY FOR RESPONDENT

QUESTION PRESENTED

WHETHER THE ALABAMA COURT OF CRIMINAL APPEALS IN THE OPINION BELOW CORRECTLY FOLLOWED THIS HONORABLE COURT'S DECISION OF ASHE V. SWENSON, 397 U.S. 436, 25 L.Ed.2d 469, 90 S.Ct. 1189 (1970), IN ITS EXAMINATION OF THE RECORD, BY TAKING INTO ACCOUNT THE PLEADINGS, EVIDENCE, CHARGE, AND OTHER RELEVANT MATTER.

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OPINIONS BELOW

The opinion of the Court of Criminal Appeals of Alabama reversing and rendering Respondent Prince's conviction is reported as follows:

Prince v. State, 431 So.2d 565 (Cr. App. Ala., 1983)

The order of the Supreme Court of Alabama denying the Writ of Certiorari in this case is reported as follows:

Ex parte State of Alabama; In re Prince v. State, 431 So.2d 568 (S.Ct. Ala., 1983)

CONSTITUTIONAL PROVISIONS INVOLVED

1. The Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States, which reads as follows:

> "No person shall be held to answer for capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (Emphasis supplied)

2. Section one of the Fourteenth Amendment to the Constitution of the United States which reads as follows:

> "...All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws..."

STATUTORY PROVISIONS INVOLVED

Respondent Prince was charged with and acquitted of rape under Title 13A-6-61(a)(1), Code of Alabama, 1975, which reads as follows:

> "§13A-6-61. Rape in the first degree.
>
> ..."(a) A male commits the crime of rape in the first degree if:
>
> (1) He engages in sexual intercourse with a female by forcible compulsion;..." (See Petitioner's Appendix "C", page 24).

At issue in this case is whether that acquittal of rape barred a prosecution and conviction for robbery under Title 13A, Section 13A-8-43(a), Code of Alabama, 1975, which reads as follows:

> §13A-8-43. Robbery in the third degree.
>
> (a) A person commits the crime of robbery in the third degree if in the course of committing a theft he:
>
> (1) Uses force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance; or
>
> (2) Threatens the imminent use of force against the person of the owner or any person present with intent to compel acquiescence to the taking of or escaping with the property. (See Petitioner's Appendix "C", page 28).

STATEMENT OF THE CASE

On July 6, 1981, the Grand Jury of Mobile County, Alabama, issued three (3) indictments against the Respondent, Chris Prince, charging that he committed the following:

> CC-81-1576
> That the defendant did, in the course of committing a theft of an automobile, the approximate aggregate value of said automobile being unknown to the Grand Jury, a theft of lawful currency of the United States of America of the approximate aggregate value of $70.00, the specific denominations of said currency being unknown to the Grand Jury, the property of Barbara Ann Bensman, used force against the person of Barbara Ann Bensman, with intent to overcome her physical power of resistance, while the said Chris Prince was armed with a deadly weapon, to-wit: a gun, in violation of 13A-8-41 of the Alabama Code;
>
> CC-81-1577
> That the defendant, Chris Prince, did abduct Barbara Ann Bensman with intent to inflict physical injury upon her, or to violate or abuse her sexually, in violation of 13A-6-43(a)(11);
>
> CC-81-1578
> That Chris Prince, a male, did engage in sexual intercourse with Barbara Ann Bensman, female, by forcible compulsion, in violation of Sec. 13A-6-61, of the Code of Alabama.

On December 1 and December 2, 1981, the Respondent was tried in the Circuit Court for Mobile County, Alabama, before the Honorable Judge Joseph Hocklander, for the indictment of rape (CC-81-1578).

That on December 2, 1981, the jury returned a verdict of not guilty as charged in the rape indictment.

Thereafter, the State announced that it was going to try Chris Prince for the indictment of robbery in the first degree (CC-81-1576). On January 19, 1982, the Respondent's attorney filed a motion to dismiss under the

1189, 25 L.Ed.2d 469 (1970), and United States v. Griggs, 651 F.2d 396 (5th Cir. 1981), alleging that the issue of the ultimate fact of the Respondent's identity had been finally determined by the trial of the rape indictment (CC-81-1578), by a valid and final judgment in favor of the Respondent, and that this issue cannot again be litigated in the trial of the robbery indictment (CC-81-1576), or the kidnapping indictment (CC-81-1577).

On January 25, 1982, in open court, the Respondent's motion to dismiss was argued before the Court and the Court denied the motion. The trial of the robbery indictment against Chris Prince was set for February 1, 1982.

After the jury was empaneled and sworn for the trial of the robbery indictment, the Respondent's attorney renewed the motion to dismiss based upon a plea of autrefois acquit as originally filed on January 19, 1982, in its entirety. The Court ruled that there was no former jeopardy in the case, and denied the motion to dismiss.

On February 2, 1982, the Respondent was found guilty of robbery in the third degree by the jury, and was sentenced to imprisonment by the Court in the penitentiary for ten (10) years. On the same date, oral notice of appeal was given, and the Court appointed Mr. G. Wayne Ashbee, a licensed attorney, to represent the Respondent on his appeal in this case. On the same date, the Court ordered a transcript of the testimony to be prepared, filed with the Clerk of the Circuit Court for Mobile County, Alabama, said transcript to be paid by the State.

The facts of this case, as found by the Alabama Court of Criminal Appeals in its opinion in the case of Prince v. State, 431 So.2d 565 (Cr.App.Ala. 1982), are sufficient for the purpose of the Respondent's Brief in Opposition to the Petition. (See Petitioner's Appendix A).

SUMMARY OF ARGUMENT

The decision of the Alabama Court of Criminal Appeals in the case below[1] was in accordance with Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970), and that body of law that has extended the doctrine of collateral estoppel to cover the facts in this case. There is no question of law at issue that justifies the grant of a writ of certiorari here. The Alabama Court of Criminal Appeals has strictly followed the admonition of Ashe, supra, that requires a reviewing court to examine the record of the proceedings, "taking into account the pleadings, evidence, charge, and other relevant matter...and determines whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration..." (Ashe v. Swenson, 397 U.S. 436, 444, 25 L.Ed.2d 469, 475-476, 90 S.Ct. 1189 [1970]).

1> See Appendix A, to the Petitioner's Appendix.

ARGUMENT

The legal principles which govern the decision here have been well established by the United States Supreme Court, the Federal Courts of Appeals, and the Alabama Appellate Courts for many years. See Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970); United States v. Griggs, 651 F.2d 396 (5th Cir. 1981); and White v. State, 378 So.2d 239 (Ala.Cr.App. 1979).

Petitioner seeks to have this case reviewed because of an alleged conflict with this Honorable Court's decision in Ashe, supra. (Petition at page 39). The Petitioner asserts that "in determining what were the issues in the rape trial, the Alabama Courts did not look beyond the defense evidence. The Court of Criminal Appeals of Alabama did not even have before it the pleadings in the rape case..." (Petition at page 41).

This is absolutely astounding and is untrue. The Court of Criminal Appeals of Alabama had before it the complete transcript of the record of the rape case and reviewed that record in its decision.[2] The Respondent's Appendix A to this Brief is a certified copy of the docket sheet of that Mobile County Clerk's Office showing that the transcript of the rape case (CC-81-1578) was prepared by the Court Reporter and was mailed by the Clerks' office to the Court of Criminal Appeals on May 6, 1982. Respondent's Appendix B is the cost bill filed by the Clerk's office in connection with case number CC-81-1578. As further corroboration of the fact that the record of the rape trial (CC-81-1578) was before the Court of

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[2] The Petitioner on page 8 of the Petition again makes the mistake that the record contains no pleadings from the rape trial, which is incorrect. The Petitioner admits on the same page, however, that a plea of not guilty is taken for granted in the case since the Respondent was tried and acquitted for rape.

the Petition beginning at page 22, where the Petitioner reviews the evidence from the transcript of the rape trial and refers to the pages of that transcript, e.g. "(D.Ex.R. 20-R.22)." The previous quoted example is a reference to the Respondent's attorney's designation of the "Defendant" as "D". Further, the Respondent's attorney below referred to the transcript of the rape trial as "Exhibit" or "Ex." in the Brief filed below, in order to distinquish the references to the transcript of the rape trial, from the reference to the transcript of the robbery trial. The Petitioner has followed this mode of designation in its Petition.

The Petitioner continues in its Petition to say that the Court's treatment of the evidence was grossly harmful. (Petition at page 41).[3] There is absolutely no basis for this statement, since the Court of Criminal Appeals of Alabama reviewed the entire transcript of the rape trial and the robbery trial, and set-out at length the evidence adduced at the trial of the rape case. The Court then simply summarized the evidence adduced at the robbery trial. See Petitioner's Exhibit A, at page 9. The basis, or seemingly so, for the Petitioner's argument in this regard is that very simply put, had the Court of Criminal Appeals reviewed the evidence in its entirety, it would have reversed the case not on collateral estoppel grounds, but because the evidence was not sufficient to have convicted the Respondent in the first place! This is preposterous, and one can only marvel at the extent of the

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3> After the Alabama Court of Criminal Appeals' decision in the case below, the Petitioner filed an Application for a Rehearing and a Motion for the Court of Criminal Appeals to find additional facts under Rule 39 (k), Alabama Rules of Appellate Procedure. This Application and the Motion were denied. See Petitioner's Appendix A, p.14.

Petitioner's ingenuity in trying the Respondent for rape, and then, having lost the trial, arguing on appeal that the evidence was insufficient to have ever tried him in the first place.

In reviewing the Petition, the attorney for the Respondent has counted in seventeen separate places where the Petitioner has referred to its own evidence of rape at the trial as either insufficient, not making out a prima facie case, a weak case, or not proving the corpus delecti of rape. If the Petitioner's case against the Respondent was so weak as it contends in this Petition, one might question the ethics of a prosecutor who continues to prosecute a defendant when that prosecutor knows his case is "insufficient as a matter of law", as the Petitioner refers to the case seventeen times in its Petition.

The Petitioner says on page 42 of the Petition that "...the weakness of the State's evidence as to the corpus delecti of rape should have been examined by the Appellate Court." The truth is that the Court of Criminal Appeals was called upon by the Petitioner on appeal to review the transcript of both cases as to the sufficiency of the evidence, and in its brief on Application for Rehearing to the Alabama Court of Criminal Appeals, the Petitioner argued that there were alternative grounds for the jury's decision in the rape trial. See Respondent's Appendix C.

Moreover, in the Respondent's Motion to Dismiss filed with the Trial Court on January 19, 1982, based upon the grounds of collateral estoppel, appeared the following statement:

> 3. That the prosecution, during the proceedings of the trial (the rape trial) did present much testimony concerning the elements of rape, and in fact, proved each of the elements of rape through expert testimony and through the testimony of the victim in this matter, Ms. Barbara Ann Bensam.

> 5. That the defense, in the trial of this matter, was that the defendant had been mistakenly identified by the victim as the perpetrator of the rape, and consequently, of each of the other charges, to-wit, robbery; thus, the only issue for resolution in the trial of this case (the rape case) was whether, in fact, the Defendant, Chris Prince, committed the acts of which the victim complained.
>
> 7. That under the authority of Ashe v. Swenson, 397 U.S. 90 S.Ct. 1189 25 L.Ed.2d 469 (1970), and United States v. Griggs, 651 F.2d 396 (5th Cir. 1981), this Court is required to examine the record of the prior proceeding, CC-81-1578 (the rape case), taking into account, the pleadings, evidence, charge, and other relevant matters, in order to determine whether a rational jury could have grounded its verdict upon an issue other than that which the Defendant seeks to foreclose from consideration in the trial of CC-81-1576 and CC-81-1577.
>
> (See Respondent's Appendix D)

Thus, the Respondent brought to the Court's attention as early as the trial level, that it had to follow the mandate of Ashe, in reviewing the record of the case in making a determination as to any issue resolved in a previous trial.

Also, as a part of the record in this case, on appeal to the Alabama Court of Criminal Appeals and the Alabama Supreme Court, was the opening and closing arguments of the prosecutor and defense counsel. The Court of Criminal Appeals reviewed those arguments and in its opinion said:

> The Appellant in this case conceded at both trials that the victim had been kidnapped, raped, and robbed. Therefore, "identity" was the only controverted issue.
>
> (Petitioner's Appendix A at page 13).

In addition, the Court of Criminal Appeals in its opinion stated that:

> Appellant, in summation, essentially conceded that the victim had been kidnapped, raped and robbed. His sole contention was that he was not the perpetrator of these crimes. He contended that the victim's blurred vision and the bad lighting conditions led to her mis-identification...Since the Appellant conceded that the victim had been raped, the only issue left for the jury, an issue which the jury decided in Appellant's favor, was the validity of Appellant's identification. In other words, the jury found that the Appellant was not the man who raped the victim.
>
> (Petitioner's Appendix A at page 8-9).

Thus, the Court of Criminal Appeals in its decision in the case below, reviewed the entire transcript of both the rape trial and the robbery trial, including opening and closing arguments, and found, based upon that review, that the only issue was one of identity. Obviously, there could be no other issue since the Respondent conceded, as found by the Court of Criminal Appeals, that the victim had been raped.

There is no conflict between the case below, and Ashe, supra, or any other decision of this Honorable Court. The Court of Criminal Appeals reviewed the entire record and made a finding in favor of Respondent. That is all it is required to do under Ashe, and that is what the Court of Criminal Appeals did. There is simply no conceivable, rational issue other than identity upon which the jury's verdict in the case below could have been grounded.

The Petitioner has sought to obfuscate the true issue in the Petition, by citing numerous examples of speculative induction as to why the jury decided to acquit the Respondent in the rape case. The only fact that is important in this Petition is that the Respondent conceded the rape of the victim, and told the jury he was not

the one who did it! There is simply no way to get around that fact. After all, how can a defendant who pleads alibi, deny that the crime took place when he was not in the vicinity at the time of the crime? The Petitioner has no logical response to this question.

The Petitioner cites examples of why its own evidence at the trial of the rape case was insufficient. Even if this were true, it is beside the point and has no relevance in this Petition. We must not lose sight of Rule 17.1.(c), which mandates that in a petition for a writ of certiorari, the petitioner must show why there are special and important reasons for the grant of the writ and in particular the petitioner must show that there is an important question of federal law decided by a state court which in a way conflicts with applicable decisions of this Honorable Court. The Petitioner says that the Alabama Court of Criminal Appeals failed to follow the mandate of Ashe in not reviewing the record of the rape and the robbery cases. This Honorable Court need only read the decision of the Alabama Court of Criminal Appeals in the case below, wherein the Court of Criminal Appeals sets out the evidence from the rape case and the robbery case and the issues involved in those cases and the concession of the rape by the Respondent, to readily see that the Petitioner's argument is refuted at the outset.

There is much, much more that the Respondent could say in response to the Petitioner's lengthy, obfuscated, and irrelevant argument in its Petition. There is, however, no need to do so, since the Petitioner has failed to meet the criteria for the grant of a writ of certiorari.

CONCLUSION

Under the authorities previously cited, a state court could not legally try a defendant for an offense allegedly occurring at the same time and place as another offense for which the defendant has been tried and acquitted.

The Trial Court below erred on January 25, 1982, when it denied the Respondent's Motion to Dismiss based upon collateral estoppel. The Respondent should not have been put to trial for the crime of robbery, since he had previously been acquitted by a jury after the rape trial, when the ultimate fact of the Respondent's identification was found in his favor by that jury.

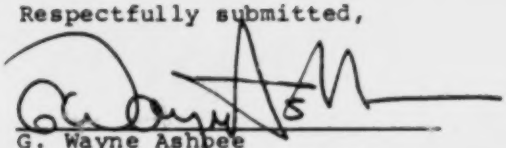
On the appeal of the Respondent's robbery conviction, the Alabama Court of Criminal Appeals reviewed, pursuant to the mandate of Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970), the pleadings, evidence, charge, and other relevant matters, in order to determine whether a rational jury could have grounded its verdict upon an issue other than that of identity. The Court of Criminal Appeals found in favor of the Respondent and reversed and rendered the decision of the trial in the robbery conviction.

The Respondent has been twice put in jeopardy in violation of the Fifth Amendment to the United States Constitution which provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb."

The decision of the Alabama Court of Criminal Appeals, and the Affirmance of the Alabama Supreme Court, in reversing and rendering the Trial Court below, was correct, as determined by the law of Alabama and the law

of the United States of America, and the Petition filed herein is due to be denied.

Respectfully submitted,



G. Wayne Ashbee
Attorney for Respondent,
Christopher Jerome Prince

CERTIFICATE OF SERVICE

I, G. Wayne Ashbee, Attorney for Respondent, Christopher Jerome Prince, do hereby certify that on this 21st day of September, 1983, I did serve the requisite number of copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari on the office of the Assistant Attorney General of Alabama, one of the Attorneys for the State of Alabama, Petitioner, by mailing same to him, first class postage prepaid and addressed as follows:

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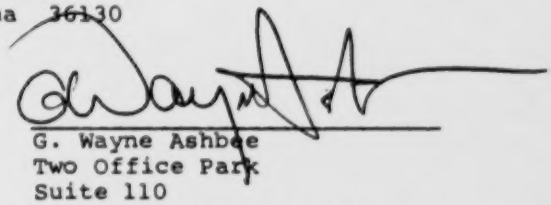

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AFFIDAVIT OF MAILING

I, G. Wayne Ashbee, do hereby certify that I did on this 21st day of September, 1983, deposit in the United States Mail, one copy each of the following documents:

1. Motion for Leave to Proceed in Forma Pauperis,

2. Affidavit to Accompany Motion for Leave to Proceed in Forma Pauperis,

3. Brief in Opposition to Petition for a Writ of Certiorari, and

4. Appendix to Brief in Opposition to Petition for a Writ of Certiorari.

The above documents were mailed first class postage prepaid by me and addressed as follows:

Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

G. Wayne Ashbee

Sworn to and Subscribed
before me on this 21
day of September, 1983.

Notary Public

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82-2079

NO. _____

IN THE SUPREME COURT OF THE

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OCTOBER TERM, 1982

STATE OF ALABAMA,

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Respondent.

APPENDIX TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT AND COURT OF CRIMINAL APPEALS OF ALABAMA

OF

CHRIS PRINCE

BY

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ATTORNEY FOR RESPONDENT

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STATE OF ALABAMA,:

COUNTY OF MOBILE.:

I, Maurice W. Castle, Jr., Clerk of the Circuit Court of Mobile County, Alabama, do hereby certify that the two (2) pages attached are true, correct and accurate copies of the Docket sheets (page one and three) in the case of State of Alabama vs. Chris Prince, as the same remains of record in my office,

Witness my hand this the 19th day of September, 1983.

Maurice W Castle Jr

Clerk of the Circuit Court
of Mobile County, Alabama

BS 4/5/81 BS 4/17/81 KC 1/25/82 KC 2/1/82 KC 2/4/82 MAS 2-2-82

Deft. has case nos. CC81-1576 thru CC81-1578

~~SULLIVAN~~ Mashburn ~~HACKLANDER~~ BYRD

State of Alabama
Supreme Court
Dept. of Court Mgmt.
FORM SC-C-8 1/77

CASE ACTION SUMMARY —CRIMINAL—

TRIAL JUDGE:

Case Number: CC 81-1576 (ID YR NUMBER)

IN THE ~~CIRCUIT~~ COURT OF MOBILE COUNTY

XX FEL ☐ MISD.
XX JURY ☐ NON JURY
☐ MUNICIPAL CASE

COURT INFORMATION ☐ DIST ☐ CIR

DEFENDANT	CHRIS PRINCE
OFFENSE (CHARGE)	ROBBERY, FIRST DEGREE §13-8-41
DEFENSE ATTORNEY	1. ~~Thomas Doyle~~ STATUS: X RET, ☐ APP
	2. Wayne Ashbee STATUS: ☐ RET, X APP
DISTRICT ATTORNEY	Galanos
PERSONAL HISTORY OF DEFENDANT	
ADDRESS	
CASE NUMBER	(ID YR NUMBER)
DATE FILED (DOCKETED)	JUL 6 1981
GRAND JURY #	51
DATE OF INDICT	JUL 6 1981
LOWER COURT CASE NUMBER	DC 81 30987
XX MALE ☐ FEMALE	☐ WHITE XX BLACK ☐ OTHER
DOB:	8/9/61
OCCUPATION:	
HEALTH:	
STATE ID NO.	002015J

	DATE ISSUED	DATE COM TO JAIL
WARRANT	4/13/81	4/11/81
Rel.	-------	
BOND	AMOUNT	DATE RELEASED
INITIAL APPEARANCE	DATE 4/15/81	
PRELIMINARY HEARING	DATE 4/28/81 ☐ WAIVED	
JAIL DEFENDANT STATUS	☐ PERS. BOND ☐ PROF. BOND ☐ PERS. RECOG. XX IN COUNTY/CITY JAIL ☐ IN PRISON	
ARRESTING OFFICER	☐ COUNTY ☐ CONSERVATION ☐ STATE ☐ MUN.	

TRIAL SET FOR: 7/27/81 ~~8/5/81~~ 8/5/81 10/7/81 11/30/81 1/25/82 2/1/82 (Dates)

7/24/81 Arr. & Y/O.

Arr: 9/4/81

LCC:91.00

DATE	BENCH NOTES, ORDERS, JUDGMENTS, ACTIONS, MINUTES, ETC., RECORD OF:
7/24/81	Re-set for arraignment and trial July 27th, 1981.
7/27/81	Defendant waived reading of indictment and plead not guilty Trial set for August 3rd, 1981. Attorney, Thomas Doyle, in court.
7/31/81	Attorney Tom Doyle allowed to withdraw as attorney for the defendant - Mr. Wayne Ashbee, Attorney-at-Law, appointed to represent the defendant in this case - Case ordered taken out of the call fo August 3rd, 1981, and re-set for August 5th, 1981. 53-
8/5/81	Order of July 27th, 1981 is hereby set aside.
8/5/81	Defendant waived trial by jury, - Defendant requested to be treated as a Youthful Offender. Investigation ordered made to determine if defendant should be treared as a Youthful Offender - Re-set fpr September 4th, 1981, for Youthful Offender Report - Report to be made by Emily Jones. Defendant's attorney, Wayne Ashbee, in court. J.D.A. 53-

COURT RECORD — DEFENDANT INDEX — COURT CALENDAR

Deft. has case nos.
CC81-1576 thru CC81-1578

Date	Page No. 3 ACTIONS (Continued)	Case Number
		CC 81-1576 (ID YR NUMBER)
2/2/82	Jury and verdict of guilty of ROBBERY THIRD DEGREE AS CHARGED IN THE INDICTMENT -	
JURY POLLED	Adjudged guilty of ROBBERY THIRD DEGREE - Sentenced to imprisonmen in the Penitentiary for Ten (10) years -	
	Notice of Appeal without suspension of sentence pending appeal -	
	Defendant allowed credit of 9 months and 22 days for time spent in jail -	
F 26 F26	Defendant's attorney, Wayne Ashbee, in court.	
M 31 M30	A P P E A L E D	
A 6 A 0	LETTER OF TRANSMITTAL OF NOTICE OF APPEAL TO THE COURT OF CRIMINAL APPEALS BY TRIAL CLERK AND NOTICE OF APPEAL TO THE COURT OF CRIMINAL APPEALS MAILED FEBRUARY 2nd, 1982.	
63 56		
2/2/82	Mr. Wayne Ashbee, Attorney-at-Law, appointed to represent the defendant on his appeal to the Court of Criminal Appeals.	
2/2/82	Mrs. Kathy Cashman, Official Court Reporter, is hereby ordered to transcribe testimony and proceedings has at the trial of this case and to file transcript of testimony and proceedings with the Clerk of the Circuit Court of Mobile County, Alabama, to be paid by the State.	
	Motion For Preparation of Trial Transcript filed by Defendant's attorney, Wayne Ashbee February 24th, 1982.	
3/2/82	Motion for Preparation of Trial Transcript filed by Attorney, February 24th, 19 Granted - Mrs. Kathy Cashman, Official Court Reporter, is hereby ordered to transcribe testimony and proceedings had at the trial of case no. CC81- 1578, and to file transcript of testimony and proceedings with the Clerk of the Circuit Court of Mobile County, Alabama, to be paid by the State.	
4/2/82	TRANSCRIPT MAILED TO THE COURT OR CRIMINAL APPEALS	
4/2/82	COPY OF TRANSCRIPT MAILED TO ATTORNEY GENERAL OFFICE	
5/6/82	Defendant's exhibits mailed to Court of Criminal Appeals.	
12/29/82	Copy of Opinion received from Court of Criminal Appeals - Reversed and Rendered. Judgment not final.	

Appendix B

STATE OF ALABAMA,:

COUNTY OF MOBILE.:

I, Maurice W. Castle, Jr., Clerk of the Circuit Court of Mobile County, Alabama, do Hereby certify that the attached is a true, correct and accurate copy of the Cost bill in the case of State of Alabama vs Chris Prince, as the same remains of record in my office.

Witness my hand this the 19th day of September, 1983.

Maurice W Castle Jr

Clerk of the Circuit Court
of Mobile County, Alabama.

THIRTEENTH JUDICIAL CIRCUIT
STATE OF ALABAMA
JOSEPH M. HOCKLANDER, PRESIDING JUDGE
COUNTY COURTHOUSE, MOBILE, ALABAMA 36602
(205) 690-8457

KATHY ELLIOTT
OFFICIAL COURT REPORTER

DEBRA GUNTER
SECRETARY

THOMAS P. MARTIN
BAILIFF

March 30, 1982

State of Alabama
Department of Finance
State Comptroller
Montgomery, Alabama 36130

STATE OF ALABAMA

v. CC-81-1578

CHRIS PRINCE

Original $298.65

Kathy Cashman

Kathy Cashman
Court Reporter
Courtroom No. 7

5

STATE OF ALABAMA)
COUNTY OF MOBILE)

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

I, Maurice W. Castle, Jr., Clerk of the Circuit Court of Mobile County, Alabama, do hereby certify that Mrs. Kathy Cashman, an Official Court Reporter of the Circuit Court of Mobile County, Alabama, was on the 2nd day of March, 19 82, ordered and directed by the Trial Judge to transcribe and prepare a transcript of the testimony and all other proceedings had at the trial of Case No. CC81-1578, State of Alabama Versus Chris Prince, Defendant, and

I do further certify that said Official Court Reporter did transcribe and prepare a transcript of the testimony and all other proceedings in said case, and did file the original ~~and xxxxxxxxxx copies~~ of said transcript in this office with the undersigned as Clerk of this Court on the 30th day of March, 19 82.

Witness my hand and the official seal of this Court on the 30th day of March, 19 82.

(SEAL)

Maurice W. Castle, Jr.
Maurice W. Castle, Jr., Clerk, Circuit Court, Mobile County, Alabama

(Note: Attach the Statement of the Court REPORTER for Court Reporter's Fees for transcribing and preparing the Transcript hereto and Mail to: State Comptroller, State of Alabama, Montgomery, Alabama. 36101

Appendix C

FEB 17 1983

FIRST DIVISION NUMBER 371

S.C. _____

IN THE SUPREME COURT OF ALABAMA

EX PARTE: STATE OF ALABAMA

EX REL: ATTORNEY GENERAL

IN RE: CHRIS PRINCE,
APPELLANT-RESPONDENT

VS.

STATE OF ALABAMA,
APPELLEE-PETITIONER.

APPEALED FROM THE CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA

ON APPLICATION FOR WRIT OF CERTIORARI TO THE
ALABAMA COURT OF CRIMINAL APPEALS

CHARLES A. GRADDICK
ATTORNEY GENERAL

AND

JAMES F. HAMPTON
SPECIAL ASSISTANT ATTORNEY GENERAL

J. ANTHONY MCLAIN
SPECIAL ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR THE APPELLEE

McLain & Hampton
567 South Hull Street
Montgomery, AL 36104
(205) 262-0336

Court's opinion wherein it is stated that the defendant conceded the rape and robbery of the victim. Further, any such concession in no way comes into consideration when applying the law to make a determination as to whether or not the Constitutional prohibition attaches to this defendant.

The State would submit that the court's finding that the only issue for the trier of fact was one of identification is only one of several interpretations which can be given the jury verdict. Other interpretations of the verdict illustrate the inapplicability of Ashe to this case. A viable theory is that the facts presented to the jury at the rape trial failed to establish rape. Could not the jury have considered the testimony of all involved, accepted the fact that there had been sexual intercourse but rejected the theory or belief of the victim that she had been raped? The case could have also fallen had the prosecution not proven venue. Illustrations of other reasons for the jury acquitting the defendant on the rape charge could go on and on. However, this argument is to the effect that availability of such other interpretations negate the court's holding that the only issue for the trier of fact was one of identification. The State would argue that while the trial court jury could have considered and believed the victim's testimony that she was robbed, they could all together reject any notion of rape or forced sexual intercourse of the victim. Again, there were other issues before the jury for their decision other than that of identification. In essence, the State would argue that the issue for the trier of fact was not identification, but whether the State had proven each essential element of the two separate

and distinct crimes.

Finally, the State would submit that it is the province of the trial court jury to make a determination as to whether or not a defendant is guilty of the crime charged. Where there is a defense of alibi such as in the case at bar, and affirmative testimony of a victim of a crime that the defendant was the perpetrator of the crime against her, such an issue should be submitted to the rational trier of fact. To invade this province of the jury on appeal, violates an area of justice and law which has been preserved for the trier of fact. The State would therefore argue that the jury's exercise of this Constitutional responsibility and duty should not have been usurped by the Honorable Court below.

Therefore this petition should be granted and an order issued affirming the conviction of the defendant.

CONCLUSION

Based on the foregoing the State respectfully asks that this Honorable Court grant the Writ of Certiorari and the conviction of the Appellant be affirmed.

Respectfully submitted,

Charles A. Graddick

CHARLES A. GRADDICK
ATTORNEY GENERAL

James F. Hampton

JAMES F. HAMPTON
SPECIAL ASSISTANT ATTORNEY GENERAL

IN THE CIRCUIT COURT FOR MOBILE COUNTY, ALABAMA

STATE OF ALABAMA,	*	CRIMINAL DIVISION
Plaintiff,	*	
vs.	*	
CHRISTOPHER JEROME PRINCE,	*	CC-81-1576 CC-81-1577
Defendant.	*	

MOTION TO DISMISS (PLEA OF AUTREFOIS ACQUIT)

Comes now the Defendant, Christopher Jerome Prince, and says as follows:

1. That the Defendant was indicted by the Grand Jury of Mobile County, Alabama, for three (3) separate offenses, to-wit:

> CC-81-1576 - That the Defendant did, in the course of committing a theft of an automobile, the approximate aggregate value of said automobile being unknown to the Grand Jury, of theft of lawful currency of the United States of America of the approximate aggregate value of $70.00, the specific denominations of said currency being unknown to the Grand Jury, the property of Barbara Ann Bensman, use force against the person of Barbara Ann Bensman, with intent to overcome her physical resistance of physical power of resistance, while the said Chris Prince was armed with a deadly weapon, to-wit: a gun, in violation of 13A-8-41 of the Alabama Code;
>
> CC-81-1577 - That the Defendant, Chris Prince, did abduct Barbara Ann Bensman with intent to inflict physical injury upon her, or to violate or abuse her sexually, in violation of 13A-6-43(a)(11);
>
> CC-81-1578 - That Chris Prince, a male, did engage in sexual intercourse with Barbara Ann Bensman, female, by forcible compulsion, in violation of Sec. 13A-6-61, of the Code of Alabama.

2. That on December 1 and December 2, 1981, the Defendant was tried in the Circuit Court for Mobile County, Alabama, before the Honorable Judge Joseph Hocklander, for charge No. CC-81-1578 (Rape).

3. That the prosecution, during the proceedings of the trial, did present much testimony concerning the elements of rape, and in fact, prove each of the elements of rape through expert testimony and through the testimony of the victim in this matter, Ms. Barbara Ann Bensman.

4. That during the trial of this matter, the prosecution also proved that the victim was robbed during the course of the rape of lawful currency of the United States of America of the approximate value of $70.00, which was in her purse at the time of the robbery; that the prosecution, during the course of this matter, also proved that the victim was abducted against her will by a person intending to inflict physical injury upon her, from her place of residence, and transported to another part of the City of Mobile, where she was raped.

5. That the defense, in the trial of this matter, was that the Defendant had been mistakenly identified by the victim as the perpetrator of the rape, and consequently, of each of the other charges, to-wit, kidnapping and robbery; thus, the only issue for resolution by the jury in the trial of this case was whether, in fact, the Defendant, Christopher Jerome Prince, committed the acts of which the victim complained.

6. That the issue of the ultimate fact of the Defendant's identity has been determined in the trial of CC-81-1578 (Rape), by a valid and final judgment in favor of the Defendant, and that this issue cannot again be litigated in the trial of CC-81-1576 and CC-81-1577.

7. That under the authority of Ashe v. Swenson, 397 U.S. 436, 90 S.C. 1189, 25 L.Ed.2nd 469 (1970), and United States v. Griggs, 651 F.2d 396 (5th Cir. 1981), this Court is required to examine the record of the prior proceeding, CC-81-1578, taking into account the pleadings, evidence, charge, and other relevant matters, in order to determine whether a rational jury could have grounded its verdict upon an issue other than that which the Defendant seeks to foreclose from consideration

in the trial of CC-81-1576 and CC-81-1577.

WHEREFORE, the Defendant respectfully requests this Court to continue the trial of CC-81-1576 and CC-81-1577, previously set on January 25, 1982, until such time as this Court has complied with the requirements of Ashe and Griggs, supra; further, the Defendant is without funds to pay for the preparation of a transcript of the trial proceeding CC-81-1578, and therefore respectfully requests this Court to order the State to prepare the same on behalf of the Defendant for the use of the Defendant's attorney in the preparation of a brief and argument before this Court pursuant to this Motion to Dismiss.

G. WAYNE ASHBEE
Attorney for Defendant
800 Downtowner Blvd.
Suite 111
Mobile, Alabama 36609

STATE OF ALA. MOBILE CO.
I CERTIFY THIS PLEADING
WAS FILED ON
JAN 19 9 49 AM '82
CLERK

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 19th day of JAN, 1982, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail properly addressed, and first class postage prepaid.

NO. [illegible]

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1982

STATE OF ALABAMA,

Petitioner,

V.

CHRIS PRINCE,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Respondent, Christopher Jerome Prince, moves this Honorable Court for an Order permitting him to proceed in this Court, in forma pauperis, in response to a Petition for Writ of Certiorari from the decision of the Supreme Court of Alabama, entered in this cause on April 29, 1983, pursuant to the provisions of Title 28, United States Code, Section 1915, and Rule 46 of the rules of this Court, and in support thereof attached the Affidavit of the attorney of said Respondent.

G. Wayne Ashbee
Attorney for Respondent,
Christopher Jerome Prince

Two Office Park
Suite 110
Mobile, Alabama 36609
(205) 343-6455

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 21st day of September, 1983, served a copy of the foregoing pleading on the office of Joseph G. L. Marston, III, an Assistant Attorney General of Alabama, by mailing the same to him, first class postage prepaid by me.

G. Wayne Ashbee

82-2079

SEP 23 1983

NO. ORIGINAL

IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER, 1982

STATE OF ALABAMA,

Petitioner,

V.

CHRIS PRINCE,

Respondent.

AFFIDAVIT TO ACCOMPANY MOTION FOR
LEAVE TO PROCEED IN FORMA PAUPERIS

I, G. Wayne Ashbee, being first duly sworn, depose and say that on July 29, 1981, I was appointed by the Honorable Joseph Hocklander to represent the Respondent, Christopher Jerome Prince, in the trial of indictments number CC-81-1576, 1577 and 1578, in the Circuit Court of Mobile County, Alabama.

1. I was appointed by the Circuit Court of Mobile County, Alabama, to represent the Respondent because the Respondent was unable to financially afford an attorney to represent him at the trial of any of these indictments. (See Request/Appointment/Acceptance of Attorney attached hereto).

2. That after the Respondent's trial and conviction of robbery, 3rd degree, pursuant to indictment CC-81-1576, the Court entered an Order appointing G. Wayne Ashbee on appeal to the Court of Criminal Appeals of the State of Alabama due to the Respondent's indigency. (See Order appointing attorney on appeal attached hereto). In addition, the trial court on February 2, 1982, entered an Order for the Court Reporter to prepare and file a

transcript to be paid for by the State of Alabama. (See Order to the Court Reporter to prepare and file transcript attached hereto).

3. That since the time of his indictment, the Respondent has been incarcerated in the prison system of the State of Alabama and is not presently employed, and the Respondent's attorney is informed by the Respondent that he has not received in tha: entire period of time any income from a business, profession or other form of self employment, or any income in the form of rent payments, interest, dividends, or any other source.

4. That the attorney for the Respondent, is informed by the Respondent that he has no cash, checking or savings accounts, and that he does not own any real estate, stocks, bonds, notes, automobiles, or other valuable property.

5. Further, the Respondent is without funds to pay the costs of prosecuting the merits of his case in response to the Petition.

6. That the Code of Alabama, Section 15-12-22 (1975) limits the amount to be paid for indigency appeals to $1000.00, and that there is no provision for a fee in excess of this amount.

7. That the $1000.00 limit has been met and exceeded, in connection with the appeal in the Respondent's case, and on August 2, 1983, the State of Alabama denied my request for funds in excess of $1000.00 to prosecute the Respondent's opposition to the Petition for Writ of Certiorari to this Honorable Court. (See letters of G. Wayne Ashbee and the Honorable William M. Bowen, Jr., attached).

I understand that a false statement in this affidavit will subject me to penalties for perjury.

G. Wayne Ashbee

Sworn to and Subscribed
before me on this 21
day of September, 1983.

Glenda Dunkard
Notary Public

OCT 12 RECD

REQUEST/APPOINTMENT/ACCEPTANCE OF ATTORNEY

Case Number: CC 81 1576 1579

COUNTY

Defendant CHAS A PRINCE

10-9-81 /Christopher Prince
Signature

Bank Copy Available

ORDER APPOINTING ATTORNEY ON APPEAL

TUESDAY, FEBRUARY 2nd, 1982

State of Alabama	)	Robbery, Third Degree -
Mashburn -vs- CC-81-1576	)	
Chris Prince	)	Order appointing attorney on appeal to the Court of Criminal
(Black Male - Age)	)	Appeals.

This day in open court came the State of Alabama by its District Attorney and thereupon in open court on this lay; It is ordered and adjudged by the court that Mr. Wayne Ashbee, Attorney-at-Law, be and he is hereby appointed to represent the defendant on this appeal to the Court of Criminal Appeals.

ORDER COURT REPORTER TO PREPARE AND FILE TRANSCRIPT OF TESTIMONY

TUESDAY, FEBRUARY 2nd, 1982

State of Alabama	)	Robbery, Third Degree -
Mashburn -vs- CC-81-1576	)	
Chris Prince	)	Court Reporter ordered to prepare and file Transcript, to be
(Black Male - Age)	)	paid by the State.

This day in open court came the State of Alabama by its District Attorney, and thereupon in open court on this day; Mrs. Kathy Cashman, Official Court Reporter, is hereby ordered to transcribe testimony and proceedings had at the trial of this case and to file Transcript of testimony and proceedings with the Clerk of the Circuit Court of Mobile County, Alabama, to be paid by the State.

July 19, 1983

Honorable John Tyson
Judge
Court of Criminal Appeals
Post Office Box 351
Montgomery, Alabama 36101

Re: State of Alabama vs.
Chris Prince

Dear Judge:

I am writing to you to see if there is any way that I might receive additional compensation for the handling of an appointed case.

The State of Alabama has petitioned the United States Supreme Court for a Writ of Certiorari, pursuant to which I will have to file a responsive brief, and if certiorari is granted, a brief on the merits. A review of the hours I have spent on the appeal of the case to the Alabama courts, indicates that I have already exhausted the one thousand dollar fee limit for the handling of such an appeal.

Do you know if there is any way I might obtain special approval for additional compensation for the handling of this case to the United States Supreme Court, since it is the State of Alabama that has petitioned for certiorari to the United States Supreme Court, it seems to me that it should be the State of Alabama that should have to pay my fee.

In any event, I did not know who else to write to concerning this matter, but if you know someone to whom I should address this question, I would appreciate your telling me.

With best personal regards, I remain,

Yours very truly,

G. Wayne Ashbee

GWA/dl

William M. Bowen, Jr.
Presiding Judge, Alabama Court of Criminal Appeals
P. O. Box 351
Montgomery, Alabama 36101

August 2, 1983

Honorable G. Wayne Ashbee
Suite 110
Two Office Park
Mobile, Alabama 36609

Dear Mr. Ashbee:

Judge Tyson asked me to reply to your letter of July 19, 1983, with regard to additional compensation in the case of State v. Chris Prince. Unfortunately, Alabama Code Section 15-12-22 (1975) has no provision for a fee in excess of $1,000.00.

I understand your position but know of no authority to authorize your request. If I can help you in any way, please call.

With personal regards, I am,

Sincerely,

Bill Bowen

William M. Bowen, Jr.
Presiding Judge

WMBJr/sdm